

Bylaws of the Administrative Conference of the United States

Title 1, Code of Federal Regulations, Part 302

§ 302.1 Establishment and Objective

The Administrative Conference Act, 5 U.S.C. §§ 591 *et seq.*, 78 Stat. 615 (1964), as amended, authorized the establishment of the Administrative Conference of the United States as a permanent, independent agency of the federal government. The purposes of the Administrative Conference are to improve the administrative procedure of federal agencies to the end that they may fairly and expeditiously carry out their responsibilities to protect private rights and the public interest, to promote more effective participation and efficiency in the rulemaking process, to reduce unnecessary litigation and improve the use of science in the regulatory process, and to improve the effectiveness of laws applicable to the regulatory process. The Administrative Conference Act provides for the membership, organization, powers, and duties of the Conference.

§ 302.2 Membership

(a) General

(1) Each member is expected to participate in all respects according to his or her own views and not necessarily as a representative of any agency or other group or organization, public or private. Each member (other than a member of the Council) shall be appointed to one of the standing committees of the Conference.

(2) Each member is expected to devote personal and conscientious attention to the work of the Conference and to attend plenary sessions and committee meetings regularly, either in person or by telephone or videoconference if that is permitted for the session or meeting involved. When a member has failed to attend two consecutive Conference functions, either plenary sessions, committee meetings, or both, the Chairman shall inquire into the reasons for the nonattendance. If not satisfied by such reasons, the Chairman shall: (i) in the case of a Government member, with the approval of the Council, request the head of the appointing agency to designate a member who is able to devote the necessary attention, or (ii) in the case of a non-Government member, with the approval of the Council, terminate the member's appointment, provided that where the Chairman proposes to remove a non-Government member, the member first shall be entitled to submit a written statement to the Council. The foregoing does not imply that satisfying minimum attendance standards constitutes full discharge of a member's responsibilities, nor does it foreclose action by the Chairman to stimulate the fulfillment of a member's obligations.

(b) Terms of Non-Government Members

Non-Government members are appointed by the Chairman with the approval of the Council. The Chairman shall, by random selection, identify one-half of the non-Government members appointed in 2010 to serve terms ending on June 30, 2011, and the other half to serve terms ending on June 30, 2012. Thereafter, all non-Government member terms shall be for two years. No non-Government members shall at any time be in continuous service beyond three terms; provided, however, that such former members may thereafter be appointed as senior fellows pursuant to paragraph (e) of this section; and provided further, that all members appointed in 2010 to terms expiring on June 30, 2011, shall be eligible for appointment to three continuous two-year terms thereafter.

(c) Eligibility and Replacements

(1) A member designated by a federal agency shall become ineligible to continue as a member of the Conference in that capacity or under that designation if he or she leaves the service of the agency or department. Designations and re-designations of members shall be filed with the Chairman promptly.

(2) A person appointed as a non-Government member shall become ineligible to continue in that capacity if he or she enters full-time government service. In the event a non-Government member of the Conference appointed by the Chairman resigns or becomes ineligible to continue as a member, the Chairman shall appoint a successor for the remainder of the term.

(d) Alternates

Members may not act through alternates at plenary sessions of the Conference. Where circumstances justify, a suitably informed alternate may be permitted, with the approval of a committee, to participate for a member in a meeting of the committee, but such alternate shall not have the privilege of a vote in respect to any action of the committee. Use of an alternate does not lessen the obligation of regular personal attendance set forth in paragraph (a)(2) of this section.

(e) Senior Fellows

The Chairman may, with the approval of the Council, appoint persons who have served as members of or liaisons to the Conference for six or more years, or former Chairmen of the Conference, to the position of senior fellow. The terms of senior fellows shall terminate at 2-year intervals in even-numbered years, renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council. Senior fellows shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

(f) Special Counsels

The Chairman may, with the approval of the Council, appoint persons who do not serve under any of the other official membership designations to the position of special counsel. Special counsels shall advise and assist the membership in areas of their special expertise. Their terms shall terminate at 2-year intervals in odd-numbered years, renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council. Special counsels shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

§ 302.3 Committees

(a) Standing Committees

The Conference shall have the following standing committees:

1. Committee on Adjudication
2. Committee on Administration
3. Committee on Public Processes
4. Committee on Judicial Review
5. Committee on Regulation
6. Committee on Rulemaking

The activities of the committees shall not be limited to the areas described in their titles, and the Chairman may redefine the responsibilities of the committees and assign new or additional projects to them. The Chairman, with the approval of the Council, may establish additional standing committees or rename, modify, or terminate any standing committee.

(b) Special Committees

With the approval of the Council, the Chairman may establish special ad hoc committees and assign special projects to such committees. Such special committees shall expire after two years, unless their term is renewed by the Chairman with the approval of the Council for an additional period not to exceed two years for each renewal term. The Chairman may also terminate any special committee with the approval of the Council when in his or her judgment the committee's assignments have been completed.

(c) Coordination

The Chairman shall coordinate the activities of all committees to avoid duplication of effort and conflict in their activities.

§ 302.4 Liaison Arrangements

The Chairman may, with the approval of the Council, make liaison arrangements with representatives of the Congress, the judiciary, federal agencies that are not represented on the Conference, and professional associations. Persons appointed under these arrangements shall

have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

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§ 302.5 Avoidance of Conflicts of Interest

(a) Disclosure of Interests

(1) The Office of Government Ethics and the Office of Legal Counsel have advised the Conference that non-Government members are special government employees within the meaning of 18 U.S.C. § 202 and subject to the provisions of sections 201-224 of Title 18, United States Code, in accordance with their terms. Accordingly, the Chairman of the Conference is authorized to prescribe requirements for the filing of information with respect to the employment and financial interests of non-Government members consistent with law, as he or she reasonably deems necessary to comply with these provisions of law, or any applicable law or Executive Order or other directive of the President with respect to participation in the activities of the Conference (including but not limited to eligibility of federally registered lobbyists).

(2) The Chairman will include with the agenda for each plenary session and each committee meeting a statement calling to the attention of each participant in such session or meeting the requirements of this section, and requiring each non-Government member (and senior fellow, special counsel, and liaison representative) to provide the information described in paragraph (a)(1), which information shall be maintained by the Chairman as confidential and not disclosed to the public. Except as provided in this paragraph (a) or paragraph (b), members may vote or participate in matters before the Conference to the extent permitted by these by-laws without additional disclosure of interest.

(b) Disqualifications

(1) It shall be the responsibility of each member to bring to the attention of the Chairman, in advance of participation in any matter involving the Conference and as promptly as practicable, any situation that may require disqualification under 18 U.S.C. § 208. Absent a duly authorized waiver of or exemption from the requirements of that provision of law, such member may not participate in any matter that requires disqualification.

(2) No member may vote or otherwise participate in that capacity with respect to any proposed recommendation in connection with any study as to which he or she has been engaged as a consultant or contractor by the Conference.

(c) Applicability to Senior Fellows, Special Counsel, and Liaison Representatives

This section shall apply to senior fellows, special counsel, and liaison representatives as if they were members.

§ 302.6 General

(a) Meetings

In the case of meetings of the Council and plenary sessions of the Assembly, the Chairman (and, in the case of committee meetings, the committee chairman) shall have authority in his or her discretion to permit attendance by telephone or videoconference. All sessions of the Assembly and all committee meetings shall be open to the public. Privileges of the floor, however, extend only to members of the Conference, to senior fellows, to special counsel, and to liaison representatives (and to consultants and staff members insofar as matters on which they have been engaged are under consideration), and to persons who, prior to the commencement of the session or meeting, have obtained the approval of the Chairman and who speak with the unanimous consent of the Assembly (or, in the case of committee meetings, the approval of the chairman of the committee and unanimous consent of the committee).

(b) Quorums

A majority of the members of the Conference shall constitute a quorum of the Assembly; a majority of the Council shall constitute a quorum of the Council. Action by the Council may be effected either by meeting or by individual vote, recorded either in writing or by electronic means.

(c) Separate Statements

(1) A member who disagrees in whole or in part with a recommendation adopted by the Assembly is entitled to enter a separate statement in the record of the Conference proceedings and to have it set forth with the official publication of the recommendation. A member's failure to file or join in such a separate statement does not necessarily indicate his or her agreement with the recommendation.

(2) Notification of intention to file a separate statement must be given to the Executive Director not later than the last day of the plenary session at which the recommendation is adopted. Members may, without giving such notification, join in a separate statement for which proper notification has been given.

(3) Separate statements must be filed within 10 days after the close of the session, but the Chairman may extend this deadline for good cause.

(d) Amendment of Bylaws

The Conference may amend the bylaws provided that 30 days' notice of the proposed amendment shall be given to all members of the Assembly by the Chairman.

(e) Procedure

Robert's Rules of Order shall govern the proceedings of the Assembly to the extent appropriate.

(Source: [ACUS 1994-1995 Annual Report at 119-24](#))

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(1) Each member is expected to participate in all respects according to his [or her](#) own views and not necessarily as a representative of any agency or other group or organization, public or private. Each member (other than a member of the Council) shall be appointed to one of the standing committees of the Conference.

(2) Each member is expected to devote personal and conscientious attention to the work of the Conference and to attend plenary sessions and committee meetings regularly-, [either in person or by telephone or videoconference if that is permitted for the session or meeting involved.](#) When a member has failed to attend two consecutive Conference functions, either plenary sessions, committee meetings, or both, the Chairman shall inquire into the reasons for the nonattendance. If not satisfied by such reasons, the Chairman shall: (i) in the case of a Government member, with the approval of the Council, request the head of the appointing agency to designate a member who is able to devote the necessary attention, or (ii) in the case of a non-Government member, with the approval of the Council, terminate the member's appointment, provided that where the Chairman proposes to remove a non-Government member, the member first shall be entitled to submit a written statement to the Council. The foregoing does not imply that satisfying minimum attendance standards constitutes full discharge of a

member's responsibilities, nor does it foreclose action by the Chairman to stimulate the fulfillment of a member's obligations.

(b) Terms of Non-Government Members

Non-Government members are appointed by the Chairman with the approval of the Council. ~~One-half of the non-Government memberships shall be filled by appointments made on or after July 1 of each year, and each term will expire on June 30 of the second year thereafter. To avoid shortening the term of any non-Government member in service as of the effective date of this paragraph, the~~ The Chairman shall, by random selection, ~~designate~~ identify one-half of the non-Government members ~~appointed in 2010~~ to serve terms ~~terminating~~ ending on June 30, ~~1988~~ 2011, and the other half to serve terms ~~terminating~~ ending on June 30, ~~1989~~ 2012. ~~Thereafter, all non-Government member terms shall be for two years. No non-Government members, other than senior fellows, shall at any time be in continuous service beyond four full terms—three terms; provided, however, that such former members may thereafter be appointed as senior fellows pursuant to paragraph (e) of this section; and provided further, that all members appointed in 2010 to terms expiring on June 30, 2011, shall be eligible for appointment to three continuous two-year terms thereafter.~~

(c) Eligibility and Replacements

(1) A member designated by a federal agency shall become ineligible to continue as a member of the Conference in that capacity or under that designation if he ~~or she~~ leaves the service of the agency or department. Designations and re-designations of members shall be filed with the Chairman promptly.

(2) A person appointed as a non-Government member shall become ineligible to continue in that capacity if he ~~or she~~ enters full-time government service. In the event a non-Government member of the Conference ~~appointed by the Chairman~~ resigns or becomes ineligible to continue as a member, the ~~appointing authority~~ Chairman shall appoint a successor for the remainder of the term.

(d) Alternates

Members may not act through alternates at plenary sessions of the Conference. Where circumstances justify, a suitably informed alternate may be permitted, with the approval of a committee, to participate for a member in a meeting of the committee, but such alternate shall not have the privilege of a vote in respect to any action of the committee. Use of an alternate does not lessen the obligation of regular personal attendance set forth in paragraph (a)(2) of this section.

(e) Senior Fellows

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year intervals in even-numbered years-, [renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council](#). Senior fellows shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

(f) Special Counsels

The Chairman may, with the approval of the Council, appoint persons who do not serve under any of the other official membership designations to the position of special counsel. Special counsels shall advise and assist the membership in areas of their special expertise. Their terms shall terminate at 2-year intervals in odd-numbered years-, [renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council](#). Special counsels shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

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1. Committee on Adjudication;
2. Committee on Administration;
3. Committee on [Governmental Public](#) Processes;
4. Committee on Judicial Review;
5. Committee on Regulation; ~~and~~
6. Committee on Rulemaking;

____—The activities of the committees shall not be limited to the areas described in their titles, and the Chairman may redefine the responsibilities of the committees and assign new or additional projects to them. [The Chairman, with the approval of the Council, may establish additional standing committees or rename, modify, or terminate any standing committee.](#)

(b) Special Committees

____—With the approval of the Council, the Chairman may establish special ad hoc committees and assign special projects to such committees.— [Such special committees shall expire after two years, unless their term is renewed by the Chairman with the approval of the Council for an additional period not to exceed two years for each renewal term. The Chairman may also terminate any special committee with the approval of the Council when in his or her judgment the committee's assignments have been completed.](#)

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§ 302.5 Avoidance of Conflicts of Interest

(a) Disclosure of Interests

(1) ~~Non~~The Office of Government Ethics and the Office of Legal Counsel have advised the Conference that non-Government members (including senior fellows) may be deemed to be special government employees within the meaning of 18 U.S.C. § 202 and subject to the provisions of sections 201-224 of Title 18, United States Code, in accordance with their terms. The~~Accordingly, the~~ Chairman of the Conference is authorized to prescribe requirements for the filing of statements of information with respect to the employment and financial interests of non-Government members consistent with law, as he or she reasonably deems necessary to comply with ~~Part III these provisions of law, or any applicable law or Executive Order 11,222, as amended, or any successor Presidential or statutory requirement. Without conceding the correctness or other directive of the view that non-Government members are special Government employees, the Conference has chosen to adopt the bylaw provisions that follow in order~~President with respect to eliminate whatever uncertainties might otherwise exist concerning the propriety of participation in Conference proceedings, the activities of the Conference (including but not limited to eligibility of federally registered lobbyists).

(2) ~~In addition to complying with any requirement prescribed by statute or Executive order, each member, public or governmental, shall, upon appointment to the Conference and annually thereafter, file a brief general statement describing the nature of his or her practice or affiliations, including, in the case of a member of a partnership, a general statement about the nature of the business or practice of the partnership, to the extent that such business, practice, or affiliations might reasonably be thought to affect the member's judgment on matters with which the Conference is concerned. (For example, a member might state that he or she represents employers or unions before the National Labor Relations Board, broadcasters before the Federal Communications Commission, or consumer groups before agencies and courts.)~~ The Chairman will include with the agenda for each plenary session and each committee meeting a statement calling to the attention of ~~the member~~each participant in such session or meeting the requirements of this section. ~~Each member who believes the content of the agenda calls for disclosure additional to that already on file will file an amended statement concerning his or her interests. Current statements of all members will be open to public inspection at the Office of, and requiring each non-Government member (and senior fellow, special counsel, and liaison representative) to provide the information described in paragraph (a)(1), which information shall be maintained by the Chairman ~~and will be readily available at any plenary session~~~~

confidential and not disclosed to the public. Except as provided in this paragraph (a) or paragraph (b), members may vote or participate in matters before the Conference to the extent permitted by these by-laws without additional disclosure of interest.

(b) Disqualifications

~~—— (1) In accordance with 18 U.S.C. § 208 a member shall not, except as provided in paragraphs (b)(2) or (3) of this section, vote or otherwise participate as a member in the disposition of any particular matter of Conference business, including the adoption of recommendations and other statements, in which, to his or her knowledge, the member has a financial interest. For purposes of this paragraph (b) a member is deemed to have a financial interest in any particular matter in which the member, the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.~~

~~—— (2) Notwithstanding paragraph (b)(1) of this section, a member may, at any stage of Conference consideration and without further disclosure, participate and vote on a proposed recommendation or other Conference statement or action relating to the procedure of any Federal agency or agencies, where the Conference action is not directed to and is unlikely to affect the substantive outcome of any pending judicial matter or administrative proceeding involving a specific party or parties (other than the United States) in which to his knowledge he has a financial interest. The Conference determines pursuant to 18 U.S.C. § 208(b) that in such a case any financial interest which the member may have in the matter before the Conference is too remote to affect the integrity of the member's service to the Conference.~~

~~—— (3) Where a member believes that he or she is or may be disqualified from participating in the disposition of a matter before the Conference under the provisions of this subsection, the member may advise the Chairman of the reason for his or her possible disqualification, including a full disclosure of the financial interest involved. If the Chairman determines in writing pursuant to 18 U.S.C. § 208(b) that the interest is not so substantial as to be likely to affect the integrity of the member's service to the Conference, the member may, upon receipt of such determination, vote and otherwise participate in the disposition of the matter.~~

~~—— (1) It shall be the responsibility of each member to bring to the attention of the Chairman, in advance of participation in any matter involving the Conference and as promptly as practicable, any situation that may require disqualification under 18 U.S.C. § 208. Absent a duly authorized waiver of or exemption from the requirements of that provision of law, such member may not participate in any matter that requires disqualification.~~

~~—— (2) No member may vote or otherwise participate in that capacity with respect to any proposed recommendation in connection with any study as to which he or she has been engaged as a consultant or contractor by the Conference.~~

(c) Applicability to Senior Fellows, Special Counsel, and Liaison Representatives

This section shall apply to senior fellows, special counsel, and liaison representatives as if they were members.

§ 302.6 General

(a) Meetings

In the case of meetings of the Council and plenary sessions of the Assembly, the Chairman (and, in the case of committee meetings, the committee chairman) shall have authority in his or her discretion to permit attendance by telephone or videoconference. All sessions of the Assembly and all committee meetings shall be open to the public. Privileges of the floor, however, extend only to members of the Conference, to senior fellows, to special counsel, and to liaison representatives; (and to consultants and staff members insofar as matters on which they have been engaged are under consideration-), and to persons who, prior to the commencement of the session or meeting, have obtained the approval of the Chairman and who speak with the unanimous consent of the Assembly- (or, in the case of committee meetings, the approval of the chairman of the committee and unanimous consent of the committee).

(b) Quorums

A majority of the members of the Conference shall constitute a quorum of the Assembly; a majority of the Council shall constitute a quorum of the Council. Action by the Council may be effected either by meeting or by individual vote, recorded either in writing or by electronic means.

(c) Separate Statements

(1) A member who disagrees in whole or in part with a recommendation adopted by the Assembly is entitled to enter a separate statement in the record of the Conference proceedings and to have it set forth with the official publication of the recommendation ~~in the Federal Register.~~ A member's failure to file or join in such a separate statement does not necessarily indicate his or her agreement with the recommendation.

(2) Notification of intention to file a separate statement must be given to the Executive ~~Secretary~~ Director not later than the last day of the plenary session at which the recommendation is adopted. Members may, without giving such notification, join in a separate statement for which proper notification has been given.

(3) Separate statements must be filed within 10 days after the close of the session, but the Chairman may extend this deadline for good cause.

(d) Amendment of Bylaws

The Conference may amend the bylaws provided that 30 days' notice of the proposed amendment shall be given to all members of the Assembly by the Chairman.

(e) Procedure

Robert's Rules of Order shall govern the proceedings of the Assembly to the extent appropriate.

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